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62-7564

MEMORANDUM FOR: Deputy Director of Central Intelligence

SUBJECT : Agency Employment of Intermittent Consultants

1. This memorandum is for information only.
2. In accordance with a request by the Director for information as to the adequacy of Agency controls relating to the employment and payment of consultants, a detailed review of this matter is attached as Tab A.
3. In summary, this review indicates that:
 - a. Adequate controls are in effect relating to the appointment of consultants.
 - b. More effective control could be exercised over the actual utilization of consultants after requests for their employment have been approved by the Director. Under present practice claims for payments to consultants are approved at various organizational levels inasmuch as Agency regulations do not call for approval at any specific level. In order to assure proper evaluation of the utilization of consultants, we propose that hereafter duty status reports used to support payments to consultants be reviewed and approved by officials at the level of Operating Officials or higher. Operating Officials are defined in as "officials reporting directly to a Deputy Director".

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GROUP 1
Excluded from automatic
downgrading and
declassification

SUBJECT : Agency Employment of Intermittent Consultants

4. A proposal will be made by this Office to amend current procedures to require that payments to consultants be based on the certification of an official of at least the level of an "Operating Official".

Comptroller

Attachments:

Tab A

Attachment to Tab A

CONCUR:

/s/

[Redacted Signature]

Office of General Counsel

16 OCT 1962

Date

/s/

Deputy Director (Support)

16 OCT 1962

Date

Approved - 9 Nov. 62

W. H. S.

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- c. When security clearances and conflict of interest certifications are favorable, the Office of Personnel requests the individual to sign a personal service contract and an appointment affidavit. A personnel action is then prepared and authenticated which formally appoints the individual as a consultant except that instead of issuing personnel actions for some individuals engaged as consultants who are receiving Federal retirement benefits, their services are contracted for as "independent contractors" on a "per consultation" basis to avoid the necessity for reductions in their retirement annuities (see General Counsel Opinion 9-1136, dated 21 July 1959, Subject: Employment of Intermittent Consultants (copy attached)).
- d. Agency regulations also require that Deputy Directors review annually, during the month of May, the use and frequency of use of individual consultants under their jurisdiction and make recommendations for the retention or termination of individual consultants. Regulations are now being revised in conformance with the requirements of a Presidential memorandum dated 9 February 1962 in regard to the time limitations on appointments of consultants and the matter of conflict of interest.
- e. The number of consultants employed by the Agency as on 1 July 1962 within each major component and the first organizational level below that of major component is shown below:

Office of the Director
Deputy Director (Support)
Office of Training
Deputy Director (Plans)
Development Projects Division
Technical Services Division
Deputy Director (Intelligence)
Office of Current Reports
Office of National Estimates
Office of Operations (Contact Division)
Office of Research and Reports
Office of Scientific Intelligence

Total

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- f. Some consultants are paid from vouchered funds and some are paid from confidential funds. Basically the procedures are as follows:
- (1) After a consultant has been used a duty status report is prepared showing the dates for which payment is requested. The following certification, over the signature of the consultant, is either typed, rubber stamped, or stapled to the performance report:

"I certify that for the days covered by this report, during which I was employed, I have not received nor will I claim compensation from any other Government agency."

- (2) Agency regulations do not specifically call for any approval of claims for payments to consultants. For consultants paid from vouchered funds, claims are approved by the time and attendance clerk for the component to which the consultant's pay will be charged. Claims for consultants paid from confidential funds are approved at various organizational levels, such as by the Chief of Branch or his Deputy, the Case Officer, Personnel Officer, Administrative Officer, or secretary to the Chief of Division.

3. CONCLUSION

Agency procedures relative to the employment and payment of consultants appear adequate except for the absence of a regulatory requirement providing for approval of claims for payment covering the utilization of consultants. It is believed that in order to assure appropriate evaluation of the utilization of the consultants, claims for payments should be approved by the Operating Official of the component concerned.

OGC 9-1136

1 July 1959

MEMORANDUM FOR: Director of Personnel

ATTENTION: Contract Personnel Division []

SUBJECT: Employment of General Lucian Truscott, Jr., USA
(Ret.), and [] as Intermittent
Consultants

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1. It has come to the attention of this Office that it is proposed to have General Truscott, who retired from the Agency 30 June 1959, serve as an intermittent consultant. We are advised that he is in receipt of both retired pay as a General and of an annuity under the Civil Service Retirement Act. It is desired, if possible, to insure that the terms of his contract as a consultant are such that there will be no legal objection to the receipt of consultant fees in addition to the retired pay and the annuity referred to. We are also advised that [] retired at the close of business 10 June 1959 and is in receipt of an annuity under the Civil Service Retirement Act. His situation with respect to the annuity is the same in principle as that of General Truscott and consequently they will be treated as one problem.

2. Regarding the retired pay as a General, the unpublished decision of the Comptroller General (B-105707) dated October 19, 1951, referring to the situation of Vice Admiral [] U.S.N. (Ret.), is pertinent and well known to the Agency. In holding that Adm. [] was entitled to retain his retired pay in addition to the fees received from his employment with this Agency the Comptroller General stated in part:

"A copy of Admiral [] contract of employment enclosed with your letter reveals that he was employed as an intermittent consultant 'to consult with the National Estimates Board as a specialist in armed service (primarily naval) aspects of national intelligence estimates,' and that his rate of compensation is fixed at \$50 per consultation.

"It informally has been ascertained from the Central Intelligence Agency that the consultant services of [] when called upon from time to time are purely advisory and rather

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infrequent. Also, that such consultations normally do not require more than one day but in the event they should extend over into the next day, the Admiral would only be entitled to one fee of \$50. Clearly, therefore, the employment of [] is predicated upon a fee basis rather than a time basis and that factor together with the other circumstances of his employment is not to be regarded as a 'civilian office or position' within the meaning of section 212 of the Economy Act of 1932, supra."

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STAT It is observed from [] file that the terms of his personal service contract provide, in accordance with the wording of the Comptroller General's decision, that he shall be paid as an "Intermittent Consultant" at a rate of \$50 per consultation rather than per day or fraction thereof. If General Truscott's contract were to be similarly worded, we would perceive no possible legal objection to the receipt of his retired pay as a General in addition to consultant fees from the Agency. We place particular emphasis on this, not only because as a Government agency we would wish to comply strictly with the Comptroller General's opinion but because it is our consultant, the retired officer himself, who will be ultimately and unnecessarily embarrassed by any failure to so comply. In addition, the activities of retired officers, particularly general officers, are presently receiving close scrutiny and wide publicity.

STAT 3. We will now consider what bearing, if any, the receipt of consultant's fees would have on the receipt of the Civil Service annuities by General Truscott and []. An unpublished decision of the Comptroller General (B-127458) dated June 6, 1956, addressed to the Secretary of Agriculture, is in point. That decision involved two retired veterinarians who were paid on a fee basis "for intermittent services" performed in control and eradication of animal diseases. In holding that no deduction was required to be made from the fees paid, the Comptroller General stated in part:

"It appears that two of the veterinarians engaged by your Department on a fee basis are over 60 years of age and are receiving annuities under the Civil Service Retirement Act, as amended, 5 U.S.C. 691 to 740(a). Section 2(b) of that act, as amended by the act of February 28, 1948, 62 Stat. 48, 5 U.S.C. 715(b), provides:

'(b) No person who is receiving an annuity under the provisions of this Act and who has reached the age of sixty years shall be eligible again to appointment to any appointive office, position, or employment under the Government of the United States or of the District of Columbia, unless the appointing authority determines that he is possessed of

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special qualifications: Provided, that no deduction for the retirement fund shall be withheld from the salary, pay, or compensation of such person, but there shall be deducted from his salary, pay, or compensation otherwise payable a sum equal to the retirement annuity allocable to the period of actual employment***. (Emphasis supplied.)

In view of the deduction provision of that part of the act just quoted, a decision is requested as to whether any deduction should be made from the fees paid these two annuitants and, if so, what method of computation should be used in determining the amount to be deducted....

"In 30 Comp. Gen. 406, we stated that 'Persons compensated on a fee basis are not considered to be officers or employees of the United States.' Since, as indicated above, the phrase 'any appointive office, position, or employment under the Government of the United States' is synonymous generally with the term 'officers and employees of the United States,' and inasmuch as the annuitants involved here are paid on a fee basis as distinguished from a time basis they are not to be considered as holding an 'appointive office, position, or employment under the Government of the United States' within the meaning of that language as used in section 2(b) of the Civil Service Retirement Act, as amended. Cf. 13 Comp. Gen. 101; 17 id. 847; 19 id. 312, id. 362; 26 id. 301; 30 id. 401. Accordingly, no deduction is required to be made from the fees paid them as compensation for their services."

A copy of this opinion is attached for your information.

4. We note that in a memorandum dated 15 June 1959 from Chief, Near East and South Asia Division to the Director of Personnel through DD/P, it is requested that [] be employed as a consultant at \$50.00 per eight hour day. In view of the clear cut position of the Comptroller General, as above set forth, we recommend, in order that there may be no risk of deduction from his compensation as a consultant, that [] contract, like that of General Truscott, provide for compensation at the rate of \$50.00 per consultation (whether the individual consultation extends for a period of one hour or in excess of one day).

5. In summary then, we emphasize the desirability of eliminating any potential complication with respect to the receipt of consultant fees in addition to retired pay be a regular officer of the armed services or by a Civil Service annuitant (or an individual like General Truscott who qualifies as both) by insuring that each contract provides for the payment of the intermittent consultant on a fee basis (i.e., per consultation) and not in any manner

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that could be construed as on a time basis. Emphasis should also be placed on the intermittent nature of the services to be performed. It is recommended that, where necessary, consultant contracts be reworded to conform to the above, as they come up for renewal. The foregoing has been informally discussed with a member of the Office of General Counsel to the Comptroller General, who concurs in our approach to the subject.

6. There is returned herewith the material on Admirals [] and [] General Truscott, and Mr. []

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/s/
LAWRENCE R. HOUSTON
General Counsel

Attachments

cc: C/Audit Staff/without basic
C/Finance Division/without basic
Director of Personnel/without basic